

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of

Broadcast Localism

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MM Docket No. 04-233

To: The Commission

COMMENTS OF NATIONAL PUBLIC RADIO, INC.

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Summary

Public radio stations are locally licensed, locally governed, locally staffed, and locally programmed community institutions committed to the ideal and practice of localism. NPR and its member stations therefore appreciate and support the Commission's effort to advance localism in broadcasting.

While the Commission is to be commended for pursuing the important goal of localism, it also has an obligation to understand the stations it proposes to regulate and tailor its regulatory approach to the salient characteristics of those stations. It is not enough to assume all radio stations are alike. Unfortunately, the Localism Report and Notice of Proposed Rulemaking fail to acknowledge, let alone appreciate, public radio and its special place in communities across the country. Before imposing new regulations to promote localism, we encourage the Commission to consider the inherently local organizational and operational characteristics of public radio, as it has whenever the Commission has previously sought to promote localism in broadcasting.

If the Commission does so, we are confident the Commission will appreciate the unique combination of institutional, financial, and social forces that, together, compel public radio stations to ascertain and serve local needs and interests. Public radio stations are governmental or non-profit entities operating under legal obligations that ensure their public accessibility and accountability. They operate with a financial imperative to provide programming so valuable and compelling that listeners will provide, on average, **one-third** of the station's budget in the form of voluntary membership donations. It was on the basis of these factors that the Commission decided 25 years ago to eliminate the types of requirements now under consideration in light of their "not insubstantial costs, misplaced emphasis, and doubtful necessity" for public radio.

The experience of the past 25 years has validated the Commission's longstanding assessment. Public radio stations have continued to demonstrate a deep commitment to localism through extensive local programming efforts, including news, public affairs, and political coverage, support for local arts, cultural, and non-profit organizations, online and non-broadcast initiatives, and service to historically underserved audiences. Recognizing the importance of local service, NPR and its member stations have committed substantial resources to strengthening the capacity of stations to serve their communities, through the NPR Local News Initiative and other efforts.¹

With this experience as a guide to examining the Commission's localism proposals, we believe that, however well intentioned, applying any new localism requirements to public radio is far more likely to harm than promote localism in public radio.

Although the Commission has yet to disclose the radio enhanced disclosure requirements, anything as detailed as the television disclosure requirements would impose a crushing burden on many public radio stations. As a traditionally free-form medium, stations produce and broadcast programming of various types and in lengths ranging from seconds to minutes to hours. Even for larger public radio stations, having to track, record, and report every piece of programming matter across myriad program categories will force the reallocation of scarce resources from the actual *production* of programs to recordkeeping and reporting *about* programs.

¹ NPR's Local News Initiative ("LNI") is a national effort to increase public radio's value to listeners by identifying services and projects that will enhance station capacity to provide quality, in-depth news. The LNI focuses on improving the quality, listener service and value of public radio's locally produced news/talk/information programming; growing, diversifying and developing the talent of those who work on public radio's locally produced news, talk, and information programs; and strengthening station capacity through more effective, efficient and collaborative use of resources. www.localnewsinitiative.org.

Never before has the Commission imposed programming renewal application processing guidelines on public radio stations, although it had imposed such guidelines on commercial stations. Nothing in the record of this proceeding casts doubt on public radio's exemplary public service or justifies this extraordinary proposal. We also believe it raises profound First Amendment questions about the role of the Commission in dictating the amount and subject matter of public radio programming.

Proposals to require community advisory boards and other specified forms of community outreach are entirely misplaced in the case of public radio. Public radio stations already rely on previously established community advisory boards and engage in extensive community outreach. Those stations that do not rely on community advisory boards, principally governmental licensees, are just as accountable to their communities through other means. We therefore urge the Commission to stay clear of the path of micro-managing a station's community outreach and interaction given the inevitable cost of regulatory compliance. If the Commission decides to proceed nonetheless, we agree with its tentative conclusion that any station with an existing community advisory board should be deemed to have satisfied any new requirements concerning a board's make-up, selection process, meeting frequency and other features.

The Commission's proposal to require a "physical presence" at every broadcast facility at all hours of operation is more likely to *reduce* than enhance the ability of stations to deliver emergency and other local information to their communities. That is because the cost of hiring personnel for no other purpose than to attend a broadcast facility will force public radio stations to reduce their hours of operation, reallocate resources from more productive uses, and even terminate broadcast operations in more remote areas.

Likewise, reinstating a rule from 1950 requiring stations to maintain a main studio within the geographic confines of its community of license will undermine, rather than promote, localism in public radio. The Commission has long recognized the important role statewide and other public radio station networks play in delivering noncommercial educational ("NCE") services. Given public radio's limited resources, the Commission has liberally granted main studio waivers to permit centralized operations. Until recently, public radio stations also were not obligated to provide a minimum field strength signal over their community of license. Requiring stations to maintain a main studio within the station's community of license could therefore cause significant disruption for many public radio stations.

For all these reasons, we urge the Commission to exempt public radio stations from any new localism requirements. An exemption would be consistent with the treatment long accorded public radio stations by the Commission and under various other statutes and regulatory regimes. The Children's Television Act represents a parallel circumstance in which the Commission concluded that the recordkeeping, filing, and submission costs were largely unnecessary for NCE stations and would outweigh any potential benefits from their application to NCE stations. If anything, the Commission might require public broadcast stations to defend their service if confronted by significant, credible complaints, and selectively impose recordkeeping, reporting, and other ameliorative measures in the unlikely case a station is found to have provided materially inadequate service.

Otherwise, imposing comprehensive new localism requirements on all public radio stations will so burden stations that the direct outcome will be the *loss* of local public service.

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Comments of National Public Radio, Inc.

Introduction

Pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, National Public Radio, Inc. ("NPR") hereby submits its Comments in response to the Commission's Notice of Proposed Rulemaking in the above-captioned proceeding.²

NPR is a non-profit membership corporation which produces and distributes noncommercial educational ("NCE") programming through more than 800 public radio stations nationwide. In addition to broadcasting award-winning NPR programming including *All Things Considered*, *Morning Edition*, and *Talk Of The Nation*, NPR's Member stations originate significant amounts of news, information, and cultural programming. NPR also operates the Public Radio Satellite System, which enables distribution of some 500,000 hours of programming annually to and by public radio stations, and provides representation and other services to its Member stations.

² In the Matter of Broadcast Localism, Report and Notice of Proposed Rulemaking, 23 FCC Rcd. 1324 (2008) [hereinafter "Localism NPRM"].

NPR is representative of a rich and vibrant public radio community. *American Public Media* ("APM"), known for producing and distributing such public radio standards as *A Prairie Home Companion* and *Marketplace*, is pioneering a listener-based programming concept, *Public Insight Journalism*, to integrate listeners directly into the news reporting process. *Public Radio International* ("PRI") distributes *This American Life*, a uniquely compelling weekly series about contemporary life in the United States, and it also established *Public Interactive*, a non-profit subsidiary that helps public radio stations create a vibrant web presence in their communities. The *Station Resource Group*, a membership organization of leading public radio stations, also pioneered the *Public Radio Exchange*, an online marketplace for public radio producers and stations to offer and review public radio programming. These and many others contribute to a public radio ecosystem that is the envy of the world.

I. In Seeking To Promote Localism, The Commission Must Tailor Any Proposed New Requirements To The Unique Attributes Of Public Broadcasting

The Localism NPRM is striking because it barely mentions public broadcasting and, even then, it is only in passing rather than to address how public broadcasting implicates localism.³ This omission is striking not just because of the important role public broadcasting has long played in advancing the interest of localism. It is striking also because the Commission previously considered the issue of localism as it concerned public broadcasting in proceedings specifically devoted to public broadcasting, and the

³ See, e.g., *id.*, 23 FCC Rcd. at 1345 (noting the obligation of cable television systems to carry both commercial and NCE television stations). See also In the Matter of Broadcast Localism, Notice of Inquiry, 19 FCC Rcd. 12425 (2004) [hereinafter "Localism NOI"].

Commission tailored its regulatory approach to the particular circumstances presented by public broadcasting.

In originally developing ascertainment and program logging rules during the 1960s and early 1970s, "public broadcasters were specifically excluded from the associated rulemaking processes."⁴ Ascertainment and program logging requirements were subsequently developed for public broadcasting, but they were done so in proceedings that focused specifically on public broadcasting.⁵ In imposing ascertainment and program logging requirements, moreover, the Commission accorded public broadcasters, and public radio stations in particular, flexibility in meeting the requirements.⁶ When the Commission eliminated the ascertainment and program logging requirements, it did so in a separate regulatory proceeding specifically addressed to public broadcasting.⁷

In its last proceeding, the Commission justified the elimination of ascertainment and program logging requirements based on the specific features of public broadcasting. In addressing programming obligations generally, the Commission observed that its

⁴ In the Matter of Revision of Program Policies and Reporting Requirements Related to Public Broadcasting Licensees, Notice of Proposed Rulemaking, 46 Fed. Reg. 43190, at ¶ 12 (1981) [hereinafter "Public Broadcasting Deregulation NPRM"].

⁵ Ascertainment of Community Problems by Educational Broadcast Applicants, 42 F.C.C.2d. 690 (1973); Program Logging Requirements for Noncommercial Educational Broadcast Licensees, 41 Fed. Reg. 56648 (1976).

⁶ See Public Broadcasting Deregulation NPRM, 46 Fed. Reg. at 43190, at ¶¶ 17-20.

⁷ Compare Deregulation of Radio, 84 F.C.C.2d 968 (1981) (directed to commercial broadcasting) with In the Matter of Revision of Program Policies and Reporting Requirements Related to Public Broadcasting Licensees, Report and Order, 98 F.C.C.2d 746 (1984) (noncommercial or "public" broadcasting) [hereinafter "Public Broadcasting Deregulation Report and Order"].

spectrum reservation policy, state and federal preferential tax treatment and direct financial subsidies, and limitations on commercial activities had long made public broadcast programming unique.⁸ As a result, public broadcasting stations had previously only to rely on their good faith discretion and judgment in discharging their programming obligation to address community issues. Commercial stations, by contrast, had been subject to processing guidelines based on specific categories of programming.⁹ Since the Commission had never subjected public broadcast programming to processing guidelines, there was no further deregulatory action for the Commission to take.

While public broadcasting stations had been subject to ascertainment requirements, the Commission was persuaded to eliminate those requirements based on attributes common among public broadcast stations. Thus, the Commission found that the role of public and private funding, including from individual listeners and viewers, meant that public broadcast stations needed to provide compelling programming to their local communities.¹⁰ In addition, requirements to have advisory boards, hold public meetings, and have public board members ensured local responsiveness.¹¹ These forces,

⁸ "Thus, the very definition of the service, the status of its operating stations, and its essentially non-profit, noncommercial programming nature make public broadcasting stations very different in programming terms, from their commercial counterparts." Public Broadcasting Deregulation Report and Order, 98 F.C.C.2d at 751.

⁹ Id., 98 F.C.C.2d at 750-51.

¹⁰ Id., 98 F.C.C.2d at 753-54.

¹¹ As the Commission observed:

Many public broadcasters are required to have advisory boards and to hold public meetings when deciding important operating matters. Further, many other licensees . . . have public members on their governing boards. While it is true that stations licensed to state or local jurisdictions are not

combined with the "substantial costs, misplaced emphasis, and doubtful necessity" of ascertainment requirements, convinced the Commission to eliminate them for public broadcast stations.¹²

Finally, with respect to the obligation to generate and maintain detailed programming records, the Commission recognized that such information was of limited utility. In fact, the Commission had never used such records in the granting or renewal of public broadcast station licenses.¹³ The Commission also recognized the substantial cost burden such requirements imposed on public broadcast stations.¹⁴ Indeed, based on a General Accounting Office study conducted at that time, the logging workload exceeded 5 1/2 million hours of work per year for public broadcast stations alone.¹⁵

This history reveals several important lessons for the Commission's current undertaking. First, any regulatory initiative to promote localism must consider public broadcasting separate and apart from its commercial counterpart. Second, the factors that define public broadcasting have a special bearing on localism. Finally, before imposing

required to have advisory boards, these stations are often under even more direct public control since state and local officials are accountable for their action or inaction through the electoral process. Other stations licensed to organizations with a primary educational purpose are subject to the direction of these institutions and their governing boards. The station that ignores these representatives does so at its own peril.

Id., 98 F.C.C.2d at 754.

¹² Id.

¹³ Id.

¹⁴ Id.

¹⁵ Id.

any new regulatory obligations on public broadcast stations, the Commission must carefully consider the need for each requirement and any corresponding burden.

II. Public Radio Stations Are Inherently Local Institutions With A Demonstrated Record Of Locally Responsive Service

Although public broadcasting is largely ignored in the Localism NPRM, the public broadcast stations represented by NPR, the National Federation of Community Broadcasters, the Station Resource Group, and other public radio organizations are fundamentally rooted in local communities, thereby assuring the ascertainment of community problems, needs, and interests. Over the course of decades, they have provided exceptional public service to their communities. In reviewing the Commission's decision almost 25 years ago to eliminate public broadcast station ascertainment and program logging requirements, one is also struck by how prescient that Commission was in relying on the institutional, financial, and social forces that, together, compel public broadcasting to serve localism.

A. Public Radio Stations Are Inherently Local

Public radio stations are locally licensed, locally governed, locally staffed, and locally programmed. This is no accident. In establishing the current public broadcasting system more than 40 years ago, Congress recognized that "[l]ocal stations are the bedrock of this system and as such must be responsive to the needs and desires of the public which they serve."¹⁶ To this day, public radio stations comprise a broad range of public and private, community-based organizations, including non-profit community groups,

¹⁶ S. Rep. No. 222, 90th Cong., 1st Sess. 7 (1967).

colleges and universities, school boards and other local governmental entities, and state governmental entities.

Public radio's inherent localism starts with the Commission's own *eligibility criteria* governing who may operate an NCE station. Under the Communications Act and the Commission's rules, only two types of entities are qualified to operate an NCE station: *governmental entities* and *nonprofit educational organizations*.¹⁷ Both are uniquely compelled to serve their local communities. Governmental entities are directly accountable to the residents whom they govern. Indeed, the Commission defines such entities as "local" throughout the area within which their authority extends.¹⁸ Nonprofit educational organizations are required by Federal and state laws to serve a charitable educational purpose.¹⁹ Localism is also the overriding factor in the selection of new NCE licensees.²⁰

In addition, and as the Commission observed in the 1984 Public Broadcasting Deregulation Report and Order, an array of *social forces* serve as critical substitutes for the regulations that formerly specified the manner in which NCE stations were accountable to their communities of license.²¹ These forces include *community advisory*

¹⁷ See 47 U.S.C. § 397(6); 47 C.F.R. § 73.503(a). See also In the Matter of Reexamination of the Comparative Standard for Noncommercial Educational Applicants, Second Report and Order, 18 FCC Rcd. 6691, 6695-96 (2003).

¹⁸ In the Matter of Reexamination of the Comparative Standards for Noncommercial Educational Applicants, Report and Order, 15 FCC Rcd. 7386, at 7409 (2000) [hereinafter "NCE Comparative Standards Report and Order"].

¹⁹ See 26 U.S.C. § 501(c)(3); D.C. Code § 47-1802.01.

²⁰ See NCE Comparative Standards Report and Order, 15 FCC Rcd. at 7409-10.

²¹ See notes ¹⁰⁻¹¹, supra, and accompanying text. Congress similarly recognized the

boards,²² *open public meetings*,²³ and the presence of *public board members*. Stations regularly solicit and receive public input through community advisory boards and interact with their communities through a multiplicity of other means, including e-mail, letters, telephone calls, faxes, public meetings, outreach meetings, local public broadcasting "friends" organizations, station web sites, and participation by station personnel in community organizations and activities. For example, *Tri States Public Radio*, operating *WIUM-FM, Macomb, Illinois* and *WIUW-FM, Warsaw, Illinois* ascertain local needs and interests in a variety of ways.

In addition to the University governing board, our station has a local Friends Advisory Board, comprised of members from throughout the region we serve in rural western Illinois and southeast Iowa; all meetings are open to the public. Community needs are ascertained annually via listener surveys posted online. Station personnel are active in the community, serving on the local performing arts board and city council.²⁴

Likewise, *Iowa Public Radio* ("IPR"), licensee of *WSUI-AM, Iowa City, Iowa* and *KSUI-FM, Iowa City, Iowa*, is governed by the Iowa State Board of Regents and the Iowa Public Radio Board of Directors, whose meetings are open to the public; IPR relies

important relationship that exists between public radio stations and their communities. See H.R. Conf. Rep. No. 1774, 95th Cong, 2d Sess. 30-31 (1978) (finding that public meetings permit and encourage community involvement in the programmatic and operational decisions of noncommercial educational licensees).

²² See 47 U.S.C. § 396(k)(8) (requiring each public radio station not licensed to a governmental entity to establish and maintain a community advisory board as a condition of receiving CPB funds).

²³ See 47 U.S.C. § 396(k)(4) (requiring each public radio station to hold board meetings that are open to the public and to give the public reasonable notice of these meetings in order to receive Federal funding).

²⁴ Comments of Tri States Public Radio, MM Docket No. 04-233, at 1, filed Feb. 22, 2008 [hereinafter "Tri States Comments"].

on a community advisory board established many years ago and whose members are drawn from throughout the IPR's coverage area and who meet 4 times each year.²⁵ IPR is also engaged in a multi-year "listening project" during which it is surveying thousands of Iowans.²⁶

Moreover, *public radio stations are financially dependent on their listeners.*

The financial contributions that local listeners voluntarily pledge to stations represent one-third of a typical public radio station's budget,²⁷ the single largest source of station revenue,²⁸ and a larger percentage than when the Commission eliminated public broadcast station ascertainment and program logging requirements 25 years ago.²⁹

²⁵ Comments of Iowa Public Radio, MM Docket No. 04-233, at 3-4, filed Mar. 19, 2008. [hereinafter "IPR Comments"]. Interlochen Public Radio is just as active and representative of stations' commitment to ascertaining their community's needs and interests:

As a local public radio station, we must continually ascertain the needs in the community and assess our effectiveness in addressing them. Fully one-third of our staff is dedicated to researching and advancing discussion of local issues. We subscribe to all local and regional daily newspapers in our community. Our Community Advisory Council provides perspective and information as to topics that should be addressed and receive a public airing. We regularly ask listeners to contact us, via on-air and online, with newsworthy topics of interest in our region. We regularly solicit listener ideas and concerns via phone, internet, mail, and at public outreach events we sponsor.

Comments of Interlochen Public Radio, MM Docket No. 04-233, at 1, filed Mar. 7, 2008 [hereinafter "Interlochen Comments"].

²⁶ IPR Comments at 4.

²⁷ Public Broadcasting Revenue, Fiscal Year 2005, Table 2 (March 2006) *available at* <http://www.cpb.org/stations/reports/revenue/2005PublicBroadcastingRevenue.pdf>

²⁸ See Who Pays for Public Broadcasting, <http://www.cpb.org/aboutpb/faq/pays.html>

²⁹ Public Broadcasting Deregulation Report and Order, 98 F.C.C.2d at 753 n.17

Public radio stations therefore have a direct and *increasing* stake in airing programming that their communities will listen to and *support* through voluntary financial contributions. Indeed, the direct financial relationship that exists between public radio stations and their communities is often the most effective determinant of how well a station is ascertaining and serving the needs and interests of its community of service.³⁰

Together, these institutional, social, and financial forces assure public radio's continued local service.

B. Public Radio Stations Provide Local And Locally Responsive Services

Public radio's deep local roots result in broadcast services that are responsive to the unique needs and interests of the stations' local communities. Every day, public radio stations offer local news programming, local public affairs programming, local political coverage, programming highlighting the work of local musicians, performers and artists, and non-broadcast services to address the needs and interests of their local communities, including underserved audiences within their communities. This locally-responsive programming includes significant amounts of locally produced programming. Indeed, according to NPR's own research, local programming is the single largest source of public radio programming.

Among NPR member stations, *news programming* represents the single largest program format, followed by classical music, and jazz music. NPR member stations also

(reporting that "[p]ublic broadcasting as a whole receives about one-sixth of its revenue from individual subscribers").

³⁰ See *id.*, 98 F.C.C. 2d at 753-754 (finding that "the relationship between the audience and the local public broadcaster is even more direct than [sic] in the case of commercial broadcasting because public broadcasting's subscribers pay directly for programming that meets their needs and interests").

broadcast significant amounts of short-form local programming, including local news and arts updates and feature pieces, throughout the day, including within nationally distributed NPR programming.³¹ This short-form local programming totals many hours of programming during the broadcast week.

Many stations produce stand-alone *local news* and *public affairs* programs. Examples include **Maine Public Radio**, which broadcasts *Maine Things Considered*, a half-hour news program aired Monday through Friday, offering the latest news from Maine as well as in-depth reports on the state's most pressing issues. **WQUB-FM, Quincy, Illinois**, produces *Presstime*, a weekly half-hour evening news magazine featuring state and local news, interviews and commentaries; and *Conversations*, a weekly half hour evening look at local issues. Closer to home, **WAMU-FM, Washington, DC**, produces *The Kojo Nnamdi Show*, a two-hour local public affairs call-in program Monday through Friday, featuring the *DC Politics Hour* every Friday, *Metro Connection*, a weekly local news magazine, and *The Diane Rehm Show*, a two-hour public affairs call-in program distributed to many other public radio stations around the country.

Political programming is a significant and integral part of the news programming carried by public radio stations. The NPR national news magazines and talk shows feature in-depth reporting on political issues and elections throughout the country and the world. In addition to this extensive national political programming, public radio stations

³¹ NPR's national news magazines *Morning Edition*, *All Things Considered* and *Day to Day* are designed so that stations can insert local news and announcements. Stations are also free to substitute local program segments for any of the news magazine segments, and most stations elect to "localize" their broadcasts of these programs.

cover local politics and elections in their local news reports, feature local politicians and candidates as guests on local public affairs and call-in shows, and broadcast local debates and government meetings. *Montana Public Radio*, for instance, employs a 3 1/2 person news department, including a full-time bureau chief in Helena, and provides live coverage of political debates and extensive interviews with candidates and public office holders.³²

Public radio stations also broadcast programming featuring *local artists, musicians and non-profit organizations*. For example, *WMPN-FM, Jackson, Mississippi*, produces *Thacker Mountain Radio*, a country and bluegrass variety show produced in partnership with the *University of Mississippi's Center for Southern Culture*. *KIOS-FM, Omaha, Nebraska*, records and broadcasts performances of the *Omaha Symphony Orchestra* and *Opera Omaha*, and, as the education extension of the *Omaha Public Schools*, KIOS-FM facilities are used as the lab of radio broadcasting students of the OPS Career Center. *Iowa Public Radio* produces *Know the Score*, a live arts and humanities program, *Java Blend*, featuring contemporary singer/songwriters in performance at an Iowa City coffee house, and *Live from Prairie Lights*, a literature reading series.³³ *KPBX-FM, Spokane, Washington*, broadcasts in-studio performances of student winners from the *Northwest Musicfest* and all major performances of the *Spokane Symphony Orchestra*. As explained by *Interlochen Public Radio*, owned and operated by *Interlochen Center for the Arts*: "We produce more than 75 hours per week

³² Comments of Montana Public Radio, MM Docket No. 04-233, at 2, filed Apr. 18, 2008 [hereinafter "MPR Comments"].

³³ IPR Comments at 2-3.

of specifically local programming, made and presented by and for people who live here."³⁴

Public radio stations offer free airtime to local non-profit organizations for public service announcements, or *PSAs*. Many provide studio and technical assistance to help local organizations produce these spots. Public radio stations like *Interlochen Public Radio* also broadcast community calendars highlighting upcoming arts and public events.³⁵

For public radio, *service to unserved and underserved audiences* has long been central to its mission.³⁶ *Radio Reading Services* are one of public radio's significant efforts to serve the needs of an underserved audience – specifically, vision-impaired and print-impaired audiences. Scores of NPR Member stations operate radio reading services on an FM subcarrier channel for the reading of everything from local and national news to grocery store advertisements. For instance, *Tri States Public Radio* is celebrating the 30th anniversary of its reading service, in which more than 100 community volunteers participate each year.³⁷ Through NPR's leadership, and with the support of the National Institute on Disability and Rehabilitation Research of the U.S. Department of Education, public radio is now exploring ways to use the HD radio technology to transition radio

³⁴ Interlochen Comments at 1.

³⁵ Id.

³⁶ In enacting the Public Broadcasting Act of 1967, Congress declared that “it is in the public interest to encourage the development of programming that . . . addresses the needs of unserved and underserved audiences.” 47 U.S.C. § 396(a)(6).

³⁷ Tri States Comments at 2.

reading services to off-the-shelf radio receivers as well as provide, for the first time, captioned radio services to the hearing impaired.

Other public radio efforts to address the needs of *minority audiences* include **KUAZ-FM, Tucson, Arizona**, which produces *Desert Voices*, a weekly half-hour program serving the residents of the Tohono O'odham nation with community information and news in the O'odham language. **WCPN, Cleveland, Ohio**, broadcasts many hours per week of *programming in Slovak, Slovenian, German, Hungarian, Lithuanian, Serbian, Polish and Ukrainian*. **WDIY, Bethlehem, Pennsylvania**, produces *Music of India*, featuring Indian Andali music and a summary of the week's news pertaining to the Indian Sub-continent and its people; the *Jewish Music Hour*, featuring contemporary and classic Jewish music; and *The Arabic Program*, featuring Arabic music, news and interviews pertaining to the Arabic community. **KLCC-FM, Eugene, Oregon**, broadcasts the 4.5-hour bilingual program, *Ahora Si*, featuring news, events and information for the Latino community. **WEAA-FM, Baltimore, Maryland**, which serves primarily an African-American audience, offers many hours of Caribbean, African, and "world" music programming each week.

Stations also broadcast nationally distributed programming that addresses the needs and interests of minority communities, including *NPR's Tell Me More with Michele Martin* and *News and Notes*. In launching these shows and others, NPR collaborated with a consortium of African-American-owned public radio stations. In addition, *Latino USA*, a production of **KUT-FM, Austin, Texas** and the *Center for Mexican American Studies at the University of Texas at Austin*, and distributed by NPR, is a national, English-language radio journal of news and culture produced from a

Latino perspective. ***RadioBilingüe*** is a non-profit radio network with Latino control and leadership that distributes Spanish-language programming to public radio stations via the Public Radio Satellite System. ***American Indian Radio on Satellite (AIROS)*** is a non-profit distributor of Native American programming, including Native American music, news, entertainment, interviews and discussions of the current issues in Indian Country and the world.

Other public radio production and distribution organizations, including ***APM*** and ***PRI***, continue to develop new programming offerings to explore the ever changing composition of America and the world. APM produces and distributes ***A Prairie Home Companion*** with the incomparable Garrison Keillor, one of America's most accomplished and beloved storytellers. APM is also home to programs like ***Marketplace***, ***Speaking of Faith*** and a very powerful new concept, ***Public Insight Journalism***, now embodied in a ***Public Insight Network***. This network comprises thousands of listeners willing to share their experiences and knowledge with radio producers and reporters. It is built on the premise that the audience has perspectives and insights that can help journalists cover the news with greater authenticity and uncover stories that would otherwise go untold.

Similarly, PRI is innovating in radio and on the web. It distributes ***This American Life***, from ***Chicago Public Radio***, a remarkable production that documents and describes contemporary life in the United States and ***The World***, an international newsmagazine co-produced with the ***BBC*** and ***WGBH Boston***. Through a non-profit subsidiary non-profit, ***Public Interactive***, PRI is helping hundreds of public radio stations

extend the life of their programming and create a vibrant web presence in their communities

Finally, NPR, in partnership with its stations, conducts extensive outreach efforts to recruit employees, discover new sources of content, and maintain contact with the public. Initiatives such as *Next Generation Radio* and the *Kroc Fellowships* are designed to bring young people, new voices, and ideas to public radio through hands-on training. NPR's *Local News Initiative* is a national effort to increase local service by enhancing station capacity to provide quality, in-depth news. With support from the John S. and James L. Knight Foundation, the LNI focuses on supporting stations in three key areas: (1) production, by improving the quality, listener service and value of public radio's locally produced news, talk, informational programming; (2) training, by developing and diversifying station talent; and (3) resource coordination, by strengthening station capacity through more effective, efficient and collaborative use of resources.

NPR and member stations are also active participants in Unity: Journalists of Color, Inc. ("**UNITY**"), a strategic alliance of the Asian American Journalists Association, the National Association of Black Journalists, the National Association of Hispanic Journalists, and the Native American Journalists Association. These efforts help to ensure that the public radio programming serves underserved audiences and includes the voices and perspectives of a broad cross-section of the country.

III. In The Case Of Public Radio, The Proposed New Regulations Will Harm Rather Than Promote Localism

As the Localism NPRM observes, localism is a bedrock principle underlying the system of broadcasting in the United States.³⁸ As inherently local institutions with a deep commitment to providing locally responsive services, public radio stations constantly strive to further that principle. We are convinced, therefore, that if the Commission considers the unique attributes of public broadcasting and the reasons why the Commission eliminated the former ascertainment and logging requirements in the first place, it will recognize that the proposed new regulatory measures described below are as unnecessary as they are likely to harm localism in public broadcasting.³⁹

A. Enhanced Disclosure

The Localism NPRM addresses a recent Commission order requiring television stations to record and make available on a quarterly basis detailed information about the station's programming.⁴⁰ Although the Commission also raised the general issue of

³⁸ Localism NPRM, 23 FCC Rcd. at 1327 (*citing* 47 U.S.C. § 307(b)).

³⁹ Without knowing how the Commission intends to define and regulate network affiliation agreements, "voice tracking," and "national playlists," NPR reserves comment on those issues. *See id.*, 23 FCC Rcd. at 1363-64 & 1369. NPR's license agreements fully respect the right of stations to determine the programming they broadcast to their communities. Trying to impose a mandatory preview requirement could be very disruptive to news coverage of fast-breaking events, live coverage, and other programming activities, and the Commission should proceed with caution. Likewise, one of the compelling features of NPR's signature news magazines, *Morning Edition* and *All Things Considered*, is the ability of stations to "localize" their presentation of the programs, and the Commission should be careful to avoid discouraging such efforts. Finally, NPR and other national producers of cultural programming take great care in their selection of music, and any attempt to discourage national playlists should not hinder the production of cultural programming for national distribution.

⁴⁰ Localism NPRM, 23 FCC Rcd. at 1334-35. See Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations.

enhanced disclosure in the digital audio broadcasting proceeding, it did so before releasing the Television Enhanced Disclosure Report and Order, and the Commission has yet to address what enhanced disclosure requirements it might impose on radio stations.⁴¹ Now that the Television Enhanced Disclosure Report and Order has been released, one can begin to assess the full impact of the paperwork burden an enhanced disclosure obligation would impose on public radio stations.

In assessing that burden, it is helpful to consider the burden imposed by the prior program logging requirements since disclosure will necessitate an ongoing, detailed tracking of programming according to a number of specific programming categories.⁴² As noted by the Commission at that time, the former program logging and ascertainment requirements contributed to its status as "a major source of government paperwork burdens"⁴³ and one of the 14 "most burdensome" Federal agencies.⁴⁴ Indeed, program logging requirements for the 4,160 AM and FM stations in existence at that time

Report and Order, 23 FCC Rcd. 1274 (2008) [hereinafter "Television Enhanced Disclosure Report and Order"].

⁴¹ Digital Audio Broadcasting Systems and Their Impact on the Terrestrial Broadcast Service, Second Report and Order, First Order on Reconsideration, and Second Further Notice of Proposed Rulemaking, 22 FCC Rcd. 10344, 10390 (2007) [hereinafter "DAB Second Further NPRM"].

⁴² See Public Broadcasting Deregulation NPRM, 46 Fed. Reg. at 43,190 n.18.

⁴³ Id., 46 Fed. Reg. at ¶ 50.

⁴⁴ General Accounting Office, Federal Paperwork: Its Impact On American Businesses at 9 (Appendix XV) (Nov. 17, 1978), *available at* <http://archive.gao.gov/f0902c/107968.pdf> [hereinafter "GAO Report"]. See also id. at 11 (in listing the 50 most burdensome business reporting requirements in terms of time required per response, noting that the Commission leads the list with 4 reports requiring from 2000 to 5,772 hours to complete.).

amounted to more than 18 million hours of paperwork per year, or 4,380 hours per station.⁴⁵ Television program logging requirements added another 4.4 million hours.⁴⁶ Radio and television program logging requirements were the top 2, and represented almost half of the total burden hours, of the 50 most burdensome Federal paperwork requirements at that time.⁴⁷

While the Commission may not envision regulatory requirements as burdensome as the former logging requirements, the television enhanced disclosure obligation requires stations to devote a substantial amount of time and resources to tracking, categorizing, and reporting on programming.⁴⁸ For instance, the television disclosure form requires a station to list, for its primary channel and each of its multicast channels, all of the programming that can be described as national news programming, local news programming produced by the station, local news programming produced by an entity other than the station, local civic affairs, local electoral affairs, independently produced, other local programming, public service announcements, paid public service announcements, and/or closed captioned programming.⁴⁹ The station is also required to provide additional detailed information about programs in these and other subject matter

⁴⁵ Id. at 37, 41.

⁴⁶ Id. at 37. Because there were only 760 television stations at that time, the burden was even higher, at 5,772 hours per station. Id. at 41. Today, there are more than 3 times the number of radio stations and more than twice the number of television stations. See Broadcast Station Totals as of December 31, 2007 (reporting 13,977 radio stations and 1,759 television stations).

⁴⁷ See GAO Report at 43-44.

⁴⁸ See Television Enhanced Disclosure Report and Order, 23 FCC Rcd. at 1305.

⁴⁹ Id., 23 FCC Rcd. at 1306-08.

categories. While the Commission has not identified the specific radio enhanced disclosure requirements,⁵⁰ anything approximating the television requirements would inflict a crushing burden on many public radio stations, particularly smaller stations, rural stations, and any stations dependent on volunteers.

For all radio stations, detailed program logging requirements would be even more burdensome than comparable television enhanced disclosure requirements because of differences in how television and radio stations are programmed. In most cases, television stations broadcast programs of standard duration, with programs concluding on the hour or the half hour. Radio is a much more free-form medium, with public radio stations broadcasting discrete programming matter, such as an excerpt of remarks on the Presidential campaign trail, that may literally last mere seconds,⁵¹ or a regularly produced program segment, such as *The Writer's Almanac*⁵² or political coverage by *Capital News Connection*,⁵³ that may last several minutes.

Having to track, record, and report every piece of programming matter that falls into one of the many designated program categories will impose a heavy burden, even for stations that may be better able to hire personnel to conduct the program tracking and disclosure function. The burden and expense will inevitably force stations to reallocate resources away from other activities, and labor intensive and expensive ones, such as

⁵⁰ See DAB Second Further NPRM, 22 FCC Rcd. at 10390.

⁵¹ In fact, the Public Radio Exchange exists to facilitate the distribution, peer review, and licensing of individual radio pieces. <http://www.prx.org/>

⁵² See <http://writersalmanac.publicradio.org/>

⁵³ See <http://www2.pri.org/cncnews/>

news reporting and local program production, will be inevitable candidates.

Programming produced for national distribution will also become more attractive because of the inherent efficiency of having a single producer provide the relevant program disclosure information to multiple stations. That is not necessarily a bad outcome because the public values high-quality national programming, but it would result in less locally originated programming

Thus, to whatever extent an enhanced disclosure requirement will provide more information to communities *about* the programming broadcast by their local stations, the associated regulatory burdens will discourage stations from actually *producing* local programming. The consequences will be heightened for the most resource-starved stations, which describes many public radio stations, especially rural and minority oriented operations. The net result will be a requirement that forces many stations to sacrifice programming in order to satisfy a regulatory obligation, an outcome contrary to localism.

Likewise, while we agree that communication between a station and its community is important, requiring stations to post the content of their public files, completed enhanced disclosure forms, and other materials on the station website will detract from efforts by stations such as ***WUKY-FM, Lexington, Kentucky*** to actually serve their communities.

Listeners who wish to see the public file can visit our studios at any time during regular business hours to view these documents. I have spent over thirty years in radio, and only once during that time has a listener asked to see a portion of this file. The resources required to have staff members scan huge numbers of documents and the high cost of the additional bandwidth required to make them available over the Internet for such a

tiny minority of interested listeners could be far better spent on covering local news or recording interviews with a local bands [sic].⁵⁴

Rather than simply mandating an Internet posting requirement, the Commission should consider allowing stations to forego maintaining a paper public inspection file as an inducement to positing their public file on the Internet.

B. Local Programming Renewal Application Processing Guidelines

Closely related to the enhanced disclosure proposal is a proposal to impose local programming renewal application processing guidelines.⁵⁵ For a regulatory obligation with such obvious First Amendment implications,⁵⁶ the Commission's perfunctory consideration of the matter is surprising.⁵⁷ Moreover, while the Commission tentatively concludes that it should "*reintroduce* specific programming guidelines,"⁵⁸ we are compelled to remind the Commission that NCE stations have never before been subject to programming guidelines.⁵⁹ We must also point out that nothing in the record of this proceeding justifies the unprecedented step of imposing programming guidelines on public radio stations.

The Commission's approach, while perhaps well intentioned, raises significant First Amendment concerns. Even defining the requirement generally to concern "locally-

⁵⁴ Comments of WUKY, MM Docket No. 04-233, at 2, filed Apr. 8, 2008 [hereinafter "WUKY Comments"].

⁵⁵ Localism NPRM, 23 FCC Rcd. at 1343.

⁵⁶ Public Broadcasting Deregulation Report and Order, 98 F.C.C.2d at 751.

⁵⁷ See Localism NPRM, 23 FCC Rcd. at 1343.

⁵⁸ Id., 23 FCC Rcd. at 1373 (*emphasis added*).

⁵⁹ See Public Broadcasting Deregulation Report and Order, 98 F.C.C.2d at 755.

oriented" programming will require the Commission to define with some specificity the types of programming that will meet the standard.⁶⁰ We also reject any assumption that a program is responsive to local needs just because it was produced within a certain radius of the station's community.⁶¹ As the Commission has previously recognized, a national program may be of substantial local value,⁶² especially because more resources can often be devoted to investigating and reporting the issue and producing the program.

Nor should the Commission impose additional political programming requirements on public radio stations. Public radio stations devote a substantial amount of resources and airtime to political coverage. Other forms of political broadcasting are largely off-limits to public broadcasters.⁶³ Given the record of public radio stations such as *Iowa Public Radio* in providing extensive local, regional, and national political coverage, there is no demonstrable need or basis for new political programming requirements.⁶⁴

⁶⁰ Localism NPRM, 23 FCC Rcd. at 1373.

⁶¹ See id., 23 FCC Rcd. at 1373(asking "how should we define local programming? Must it be locally produced?").

⁶² See Localism NOI, 19 FCC Rcd. at 12431 (noting that "[a] program, for example, that discusses teenage drinking generally may be highly relevant to a particular community even though it is not produced specifically for that community or tailored to its particular problems in this area.")

⁶³ Thus, public broadcast stations are statutorily prohibited from broadcasting political advertising. 47 U.S.C. § 399b(b). Congress has exempted public broadcast stations from the obligation to provide candidates with "reasonable access" to station facilities. See 47 U.S.C. § 312(a)(7).

⁶⁴ IPR Comments at 2.

Adopting program processing guidelines also begs the question of what the Commission will do with the information. If the Commission intends to base license renewal decisions on a station's performance in relation to the processing guidelines, it will inevitably become embroiled in content decisions on a station-by-station and issue-by-issue basis. The Commission properly disclaimed such a role long ago.⁶⁵

Program processing guidelines pose a threat to localism because they interfere with and skew the licensee's assessment of the programming most responsive to the needs of its community. However unintentionally, program guidelines dictate the broadcast of specified categories and amounts of programming for no other reason than to satisfy a regulatory obligation. Stations will have no incentive to produce high quality programming. They will have no incentive to produce more than the specified minimum quantity of programming. The objective will be to produce just enough programming to satisfy the Commission, regardless of what the station's community may need or want. Particularly since the Commission has no reason to question the quality or sufficiency of programming broadcast by public radio, it should continue to rely on the financial, institutional, and social forces that have heretofore served the public so well.

C. Community Advisory Boards and Other Ascertainment Requirements

In the interest of promoting communication between a station and its community, the Localism NPRM proposes to require stations to establish community advisory boards and undertake other forms of community outreach.⁶⁶ Many public radio stations have

⁶⁵ See FCC v. WNCN Listeners Guild, 450 U.S. 582 (1981).

⁶⁶ Localism NPRM, 23 FCC Rcd. at 1336-37.

well established community advisory boards and engage in other forms of outreach, and the Commission should not attempt to regulate these efforts by public broadcasters.

Many public broadcasting stations are already statutorily obligated to establish and rely on community advisory boards.⁶⁷ While certain other stations do not bear this obligation, the Commission long ago recognized that these stations are subject to sufficient other safeguards to assure their ongoing community responsiveness.

While it is true that stations licensed to state or local jurisdictions are not required to have advisory boards, these stations are often under even more direct public control since state and local officials are accountable for their action or inaction through the electoral process. Other stations licensed to organizations with a primary educational purpose are subject to the direction of these institutions and their governing boards. The station that ignores these representatives does so at its own peril.⁶⁸

There is no basis in the record of this proceeding to question the Commission's prior well-founded judgment. If the Commission were to proceed nonetheless, we agree with the Commission's tentative conclusion that any station with an advisory board in place should be deemed to satisfy any new requirements concerning a board's make-up, selection process, meeting frequency and other features.⁶⁹ Forcing stations with existing advisory boards to establish new ones under new and different requirements will impose a substantial burden without any offsetting benefit.

Likewise, as noted above, many public radio stations utilize a variety of means to ascertain the needs of their communities, including public meetings, outreach meetings, local public broadcasting "friends" organizations, the station

⁶⁷ See note ²², supra.

⁶⁸ Public Broadcasting Deregulation Report and Order, 98 F.C.C.2d at 754.

⁶⁹ Localism NPRM, 23 FCC Rcd. at 1336.

web site, and listener e-mails, letters, and telephone calls.⁷⁰ Some of this outreach is undertaken pursuant to statutory requirements. In all cases, it is because existing financial and institutional incentives compel public radio stations to ascertain the needs of their communities. Imposing new outreach requirements, particularly ones that conflict with existing station activities, will increase station regulatory compliance costs while serving no beneficial purpose.

D. Remote Station Operation

The Localism NPRM proposes to require all stations to maintain a physical presence at each broadcasting facility during all hours of operation.⁷¹ The Commission acknowledges that this proposal reverses a longstanding policy decision that accorded broadcast stations flexibility in the use of technology to control and operate a station.⁷² The Commission proposes this change for two reasons. First, the Commission states that "[r]equiring that all radio stations be attended can only increase the ability of the station to provide information of a local nature to the community of license."⁷³ Second, citing the ever present risk of severe weather or a local emergency, the Commission states that attended operation "may increase the likelihood that each broadcasters will be capable of relaying critical life-saving information to the public."⁷⁴

⁷⁰ See pages 7-9, supra.

⁷¹ Localism NPRM, 23 FCC Rcd. at 1337-38.

⁷² Id., 23 FCC Rcd. at 1337.

⁷³ Id., 23 FCC Rcd. at 1338.

⁷⁴ Id.

The Commission's general assertion that attended operation "can only increase" a station's ability to provide local information is plainly incorrect because it assumes that stations can simply hire personnel to maintain a physical presence at all broadcast facilities. Having to employ someone just to maintain a physical presence at a facility will be cost prohibitive for many stations, however, and many stations will simply reduce the hours of operation of their broadcast facilities, terminate operation of a facility altogether, or reallocate resources away from producing local programming.⁷⁵ The result, then, will not be an increased ability to provide local information, but the opposite.

We also recognize the important role public radio stations play in providing critical emergency information to their communities. In fact, public radio stations have utilized technology to operate stations remotely as a means of extending service geographically and for longer times during the day. While we support examining ways to improve the dissemination of emergency information, requiring stations to maintain a physical presence at all broadcast facilities at all hours of operation is neither the only, nor the best, means of accomplishing that objective. Rather, the Commission should focus on improving the emergency alert system ("EAS") itself, which it is already doing.⁷⁶ Otherwise, requiring attended operation will likely diminish the Nation's

⁷⁵ See, e.g., IPR Comments at 4 ("We . . . fear that a requirement to staff each control room 24 hours a day would prevent us from hiring the reporters, producers and other staff that tangibly improve local program offerings."); Interlochen Comments at 2 ("If these [remote operation and main studio] changes are adopted, it is very likely that we would actually reduce our hours of operation or consider abandoning operations in some areas.")

⁷⁶ See Public Notice, Federal Communications Commission Announces Agenda for Summit on the Current State and Future of Nation's Emergency Alert System, Apr. 21, 2008.

emergency alert system because the cost of physically attending a station will force stations to limit or discontinue their operation.

As but one example, a "physical presence" requirement would likely force WUKY-FM, Lexington, Kentucky, to sign off from 8 p.m. on weekday evenings until 5 a.m. the following morning, with devastating consequences for the people of Central Kentucky:

Thanks to automation EAS alerts, Amber alerts, and weather warnings are now automatically relayed to our listeners. Those warnings would not air at all under the proposed rule. Our subcarrier broadcasts the programming of the Central Kentucky Radio Eye, which has a wide array of services for blind and physically handicapped individuals that airs during this overnight period. That service, too, would be lost. Most important, however, is that our news and other staff members are always on call and prepared to come into the studios on a moment's notice if an emergency develops any time overnight or on the weekends. This service would also be lost under the proposed rule.⁷⁷

Rather than "increasing" the ability of stations to serve their communities, the proposed rule would have the opposite effect.

E. Main Studio Rule

The Localism NPRM inquires whether the Commission should revert to a rule promulgated in 1950 requiring each station to maintain a main studio in its community of license.⁷⁸ Under the current rule adopted in 1987 and amended in 1998, a licensee may locate its main studio at any location within the station's principal community contour or 25 miles from the reference coordinates of the center of its community of license.⁷⁹

⁷⁷ WUKY Comments at 1-2.

⁷⁸ Localism NPRM, 23 FCC Rcd. at 1343-44.

⁷⁹ Id.

Because many stations have established main studios in reliance on the current rule, we believe reinstating the original rule will be extremely disruptive and costly for stations.

The cost and disruption would be particularly harmful for public broadcast stations for two reasons. First, although not addressed by the Localism NPRM, the Commission historically has liberally granted public broadcasting stations waivers of the main studio rule. In revising the original main studio rule to permit stations to locate its main studio modestly outside its community of license, the Commission noted that, "[i]n the past, we have recognized the benefits of centralized operations for noncommercial educational stations, given the limited funding available to these stations, and we have granted networks to operate 'satellite' stations that do not necessarily meet the requirements of a main studio."⁸⁰ That is not to say public broadcast stations are free to ignore local service obligations,⁸¹ but there is no basis to believe that such stations have done so. To the contrary, public radio stations provide exemplary local service often without having maintained main studios in their communities of license.

Second, for many years, NCE radio stations operating on the reserved FM spectrum were not obligated to provide a minimum field strength signal over their community of license. The Commission accorded NCE stations this flexibility based on the more limited service areas and limited financial resources of such stations.⁸²

⁸⁰ In the Matter of Amendment of Section 73.1125 and 73.1130 of the Commission's Rules, the Main Studio and Program Origination Rules for Radio and Television and Television Broadcast Stations, Memorandum Opinion and Order, 3 FCC Rcd. 5024, 5027 (1988).

⁸¹ Id., 3 FCC Rcd. at 5027.

⁸² "The Commission enacted this policy based on the fact that many NCE FM stations operate at low power levels and simply could not provide coverage to the entire

Although the Commission adopted a partial community coverage requirement in 2000, it only applied that requirement to subsequently licensed NCE stations.⁸³ As a result, NCE stations had an interest in locating their main studios in the area served by their transmitter, which may not be within the station's community of license.

Forcing public radio stations to establish a main studio in the station's community of license would be extremely disruptive for many public radio stations, including *Iowa Public Radio's* statewide network.

Main studio waivers have enabled rural public radio stations to serve large geographic areas in this country that could not possibly support stand-alone stations. Iowa Public Radio would find it very difficult to provide its current level of service to communities in rural areas with low population numbers if we had to provide a main, staffed studio in each station location.⁸⁴

Montana Public Radio, would be forced to cease operation of 4 of the 6 transmitters in its statewide network if the Commission required each station to maintain a main studio in its community of license.⁸⁵ As these and other public radio stations can attest,

area within the legal boundaries of its community of license. The Commission also recognized that NCE FM stations are generally dependent on listener support, and may not have the financial resources to construct facilities that serve the entire community of license. In addition, a NCE FM station's programming is often oriented toward a particular audience (e.g., a college campus)." In the Matter of 1998 Biennial Regulatory Review -- Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules, Notice of Proposed Rulemaking, 13 FCC Rcd. 14849, 14876 (1998).

⁸³ In the Matter of 1998 Biennial Regulatory Review -- Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules, Second Report and Order, 15 FCC Rcd. 21649, 21670 (2000).

⁸⁴ IPR Comments at 5.

⁸⁵ MPR Comments at 4.

reverting to the main studio rule promulgated almost 60 years ago will almost surely harm rather than further localism.⁸⁶

IV. Public Radio Stations Should Be Exempt From Any New Localism Requirements

As demonstrated throughout these comments, the Commission has always tailored its regulations to the unique attributes of public broadcasting, and regulations intended to promote localism are no exception. Thus, the Commission long refrained from imposing localism requirements on public broadcast stations and, when it did, it did so only after specific consideration of public broadcasting and by imposing requirements modified to afford public broadcast stations substantial regulatory flexibility. The Commission's predictive judgment about public broadcasting's commitment to localism rendered 25 years ago was based on the fundamental organizational characteristics of public broadcast stations, their financial dependence on local communities, and the influence of a number of important social forces. That judgment has been validated by public radio's continuing role as a community institution that, every day in myriad ways, engages and serves communities across the country.

For these reasons, the Commission should exempt public radio stations from any new requirements adopted to promote localism. Far from advancing localism, the proposed requirements will impose substantial burdens on even the largest public radio stations. The likely consequence will be less public service, not more, as stations seek to minimize the burdens by reducing station operations, news reporting, and other station

⁸⁶ See also Tri State Comments at 3 ("If we were forced to spend our resources on equipping a main studio in Warsaw, we would not be able to afford to pay the salary and benefits of the reporter who so consistently and thoroughly covers this underserved, rural region now.").

activities that are expensive to conduct or that incur regulatory compliance costs.⁸⁷

Absent a specific need to promote localism in public broadcasting, imposing regulatory costs on historically under-resourced organizations is contrary to the public interest.

We also urge the Commission to consider the relief accorded public broadcast stations from a host of other legal requirements. Under the Communications Act and Commission Rules alone, public broadcast stations were, as addressed above, exempt from program processing guidelines and subject to relaxed program logging requirements.⁸⁸ In addition, such stations are exempt from (1) all regulatory and application filing fees,⁸⁹ (2) the auctioning of spectrum to resolve mutually exclusive applications,⁹⁰ (3) political program requirements, including "reasonable access" and "lowest unit charge" requirements,⁹¹ and, in the case of public television stations, (4) children's television requirements.⁹²

⁸⁷ E.g., Interlochen Comments at 2 ("[I]mposing mandatory minimum program origination obligations, enhanced disclosure requirements, and new license renewal processing guidelines will increase our administrative costs at a time when we are already under-resourced and increasingly stretched thin financially.")

⁸⁸ See pages 3-4, supra.

⁸⁹ See In the Matter of Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985, Report and Order, Gen Doc. No. 86-285, 2 FCC Rcd. 947, at ¶ 73 (1987) (application fee exemption); In the Matter of Implementation of Section 9 of the Communications Act Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, Report and Order, 9 FCC Rcd. 5333, 5339-40 & 5341 (1994) (regulatory fee exemption).

⁹⁰ See 47 U.S.C. § 309(j).

⁹¹ See 47 U.S.C. § 312(a)(7) (reasonable access requirement); 47 C.F.R. § 73.1942(d) (candidate rates).

⁹² See In the Matter of Policies and rules Concerning Children's Television Programming Revision of Programming Policies for Television Broadcast Stations.

The Children's Television Act exemption is particularly relevant here. That Act imposes commercial limits and reporting requirements on broadcast television stations and cable operators, requires such entities to serve the programming needs of children, and requires the Commission to review television station compliance,⁹³ in support of which, the Commission has imposed certain recordkeeping and reporting requirements.⁹⁴ The Commission exempted NCE television stations from the recordkeeping, filing and submission requirements, however, because it determined that "[t]he additional costs of regulation are largely unnecessary for noncommercial stations, and would outweigh any potential benefits from application of the . . . rules to noncommercial stations."⁹⁵ These same factors support exempting public broadcasting stations from any new localism paperwork requirements.

Public broadcasting also receives favorable treatment under other statutory and regulatory regimes. As tax exempt organizations, many public broadcast stations are exempted from paying federal and state income taxes by virtue of serving a nonprofit, educational purpose.⁹⁶ Such stations are entitled to waivers of rental payments associated

Report and Order, 11 FCC Rcd. 10660, 10684 n.119 (1996) [hereinafter Children's Television Report and Order"].

⁹³ 47 U.S.C. §§ 303a, 303b, 394.

⁹⁴ See In the Matter of Policies and Rules Concerning Children's Television Programming; Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial Television Stations, Report and Order, 6 FCC Rcd. 2111 (1991).

⁹⁵ Id. at 2116.

⁹⁶ 26 U.S.C. § 501(c)(3). See, e.g., D.C. Code § 47-1802.01 (District of Columbia income tax exemption for charitable organizations).

with communications site uses of Federal lands.⁹⁷ Public broadcast stations are accorded favorable treatment under a number of provisions of the Copyright Act.⁹⁸

If the Commission is concerned that an exemption might imply that public broadcast stations are not obligated to provide a fundamentally local service, it might reassert that obligation and put public broadcast stations on notice that they will have to defend their service if confronted by significant, credible complaints.⁹⁹ This approach is similar to how the Commission has implemented the Children's Television Act obligations in the case of public television stations.¹⁰⁰ In the unusual case of a public radio station found to have provided inadequate service, moreover, the Commission might apply relevant reporting, disclosure, and ascertainment requirements as a corrective measure. As a general matter, the Commission may impose reporting conditions in connection with a license renewal,¹⁰¹ and utilizing that approach would address any

⁹⁷ See 43 U.S.C. § 1764.

⁹⁸ See 17 U.S.C. § 118 (use of non-dramatic musical works and pictorial, graphic, and sculptural works); § 114(b) (use of sound recordings); § 114(d)(1)(B)(iv) (same).

⁹⁹ The main studio and unattended operation proposals are ill-conceived for the reasons stated above and should be rejected. See pages 26-31, *supra*.

¹⁰⁰ See In the Matter of Policies and Rules Concerning Children's Television Programming Revision of Programming Policies for Television Broadcast Stations, Memorandum Opinion Order, 6 FCC Rcd. 5093, 5101-02 (1991); Children's Television Report and Order, 11 FCC Rcd. at 684 n.119.

¹⁰¹ See, e.g., In the Matter of Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies, Second Report and Order and Third Notice of Proposed Rulemaking, 17 FCC Rcd. 24018, 24067 (2002) (providing notice of the Commission's intent to use sanctions and remedies, including reporting conditions, to promote compliance with the Commission's EEO rules).

specific issues that arise without imposing burdens on all stations, including the vast universe of public radio stations that provide exemplary local public service.

Conclusion

NPR urges the Commission to consider public radio's inherent localism and demonstrated commitment to serving the needs and interests of their communities and exempt public radio stations from the new regulatory requirements because those requirements will impose a significant burden and undermine the public interest.

Respectfully submitted,

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